Mortgage Servicing Calls: Why the Proposed Exemption is Necessary

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Timeline of Key TCPA Milestones Impacting Mortgage Borrowers

1991 – TCPA Enacted
- Intended to curb telemarketing abuses
- Cell phones are rare and expensive

2008 – Mortgage Crisis
- Regulators require telephone calls to borrowers to prevent foreclosures
- TCPA litigation begins to explode
- Cell phones are common

2015 – FCC Ruling
- Creates additional uncertainty and liability exposure

2015 – Budget Act Amendment
- Exempts calls made solely to collect a debt owed to or guaranteed by the United States

2016 – FHFA Urges FCC to Exempt Mortgage Servicing Calls
- Requiring consent "adversely impacts outreach efforts for loss mitigation and homeownership preservation"

2016 – MBA Files Petition for Exemption
- Seeks exemption for mortgage servicing calls ot all borrowers

2016 – FCC Issues Budget Act Regulation
- Limited applicability to mortgage loans

The Benefits of Mortgage Servicing Calls Are Undisputed

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- “The issue of **how well mortgage servicers communicate** with homeowners has been **fundamental to our nation’s ability to address the housing crisis**. The reason is simple: unless mortgage servicers communicate successfully with at-risk homeowners, there can be no modification of a mortgage and no path to avoiding a foreclosure.” *Making Contact: The Path to Improving Mortgage Industry Communication with Homeowners, A Report on the U.S. Department of the Treasury’s Guidance on Homeowner Single Point of Contact.*
- That is why ***outbound calls are required*** by GSEs (Fannie Mae and Freddie Mac), FHA, VA, HAMP, USDA and federal and state mortgage servicing rules.

What Requires Mortgage Servicers to Call Borrowers?

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Agency	Required Contact
CFPB Mortgage Servicing Rules	Telephone or in-person contact by the 36th day of delinquency
FHA	Telephone contact within 20th day of delinquency; at least 2 times per week until contact established or determine property is vacant or abandoned
Fannie Mae and Freddie Mac	Outbound contact attempts, including text and telephone, by the 36th day of delinquency and every 5 days until contact made, delinquency resolved, or certain other events occur
Treasury – Home Affordable Modification Program (HAMP)	Minimum of 4 telephone calls to the last known phone numbers of record, at different times of the day, within 30 day period
VA Mortgage Servicing Rules	Telephone contact no later than the 20th day of delinquency
USDA	Attempt telephone or written contact before the account becomes 20 days past due; USDA recommends making personal contact with a delinquent borrower until the delinquency is cured
California, Nevada, and Washington State Pre-Foreclosure Rules	Telephone and / or in-person “initial contact” or due diligence required before issuing or recording a Notice of Default. Due diligence requires telephone contact at the primary telephone number on file at least three times at different hours and on different days.

Why Are Mortgage Servicing Calls Beneficial to Consumers?

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- These are not telemarketing calls.
- These communications are designed to:
  - identify ***unintentional delinquencies***
  - determine the ***reason for the delinquency*** and whether the reason is temporary or permanent in nature
  - determine whether the borrower has ***abandoned or vacated the property***
  - determine the borrower's current perception of their ***financial circumstances*** and ability to repay the debt
  - set ***payment expectations*** and educate the borrower on the availability of alternatives to foreclosure
  - provide ***homeowner counseling*** information
  - discuss options upon the ***death of a borrower***
  - discuss ***missing documentation*** needed to complete a loss mitigation application
  - address misconceptions or misinformation about the effect of not making payments and other bad advice from ***debt relief scams***
  - avoid impact of ***negative consumer credit reporting***
- These are not the types of calls the TCPA was designed to stop.
- Consumer advocacy groups supported outbound call requirements to facilitate these communications because they are effective.

How Are These Calls Different than "Robocalls"?

- These communications are ***consumer-focused***.
- For example, the GSEs provide ***best practices*** to communicate and build trust with consumers:
  - "Build trust with the borrower within the first 10-15 seconds by establishing empathy and a desire to help identify and discuss with the borrower … the most appropriate options for delinquency resolution."
  - *"Hello my name is ____ and I am with ____. I see that you are behind in making your mortgage payments and I would like to talk more and see if there is anything we can do to help you get back on track."*
  - *Communicating with Borrowers: Collections and Loss Mitigation Reference Guide,* Freddie Mac (July 2015)
- Other federal laws provide ***protections to consumers*** for these calls.
  - For example, the FDCPA and the CFPA prohibit unfair, deceptive and abusive acts and practices.
- The industry is ***heavily regulated*** at the federal and state levels.
  - Supervisory examination and enforcement action jurisdiction.

Why Are Mortgage Servicers Concerned About the TCPA?

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- Creditors and servicers have been ***obtaining prior express consent*** by providing clear disclosure to credit applicants and borrowers that provision of a telephone number to the creditor or servicer authorizes the creditor or servicer to contact the borrower at any number the borrower provides.
  - challenges with the duration of these loans
  - mortgage servicing transfers
- Even if a mortgage servicer has prior express consent, the servicer is ***still at risk*** of alleged violations of the TCPA.
  - reassignment of the telephone number without any knowledge by the servicer
  - alleged revocation of prior express consent
- These ***risks are not hypothetical***; they are real.
- A professional plaintiff recently admitted to purchasing as many as 35 cell phones specifically to ***manufacture lawsuits***.
- These lawsuits expose mortgage servicers to ***uncapped penalties*** for calls made to comply with outbound call requirements.

Why Are Mortgage Servicers Concerned About the TCPA?

- The volume of calls required by federal and state rules, GSE and investor requirements and good faith efforts to work with distressed borrowers makes exposure particularly troubling.
  - For example, if a servicer makes the minimum number of 4 calls to a borrower's last known telephone number as required by HAMP, that could result in $2,000 in statutory penalties for one borrower.
  - These are calls Treasury requires servicers to make to help a borrower obtain a loan modification.
- This volume also makes the use of limited calling equipment and manually dialed calls impractical.
- Limited calling equipment and manually dialed calls create additional compliance risks.
- While the TCPA is intended to be pro-consumer, for American homeowners who are struggling financially, the Act ***may make the loss of a home or difficulties in resolving delinquency more likely***.
- This hurts consumers, neighborhoods, communities and our economy.

Why Did FHFA Urge the Commission to Exempt Mortgage Servicing Calls?

- FHFA has significant firsthand experience about how to effectively communicate with mortgage borrowers.
- FHFA worked with other federal regulators to create outbound call requirements.
- FHFA explained the need for relief from the prior express consent requirements under the TCPA to facilitate effective communications between mortgage servicers and borrowers.
- FHFA concluded: "***Requiring mortgage servicers to have the consumer's express consent to be contacted or face potential liability under the TCPA <u>adversely impacts</u> outreach efforts for loss mitigation and homeownership preservation***."
- The Commission has the authority to ensure the TCPA does not harm any mortgage borrower's ability to receive timely, live communications from their mortgage servicer.

The FCC Has the Authority to Exempt All Mortgage Servicing Calls

- The TCPA authorizes the FCC to exempt from the prior express consent requirement cell phone calls that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights the TCPA is intended to protect. 47 U.S.C. 227(b)(2)(C).
- Mortgage servicing calls ***are more beneficial*** to consumers than existing exemptions.
- The FCC could use this authority to level the playing field for all mortgage servicing communications, regardless of whether the loan is owed to or guaranteed by the federal government.
  - Borrowers do not control who owns or guarantees their loans.
  - It is against consumers' interests to treat them differently on these grounds.

How Does the MBA Petition Help Mortgage Borrowers?

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Facilitates Communications

- Allows servicers to comply with outbound call requirements without litigation exposure
- Proposes conditions on exemption consistent with package delivery, financial institution and healthcare communications

Respects Consumer Privacy

- Leaves telemarketing restrictions unchanged
- Leaves mortgage servicing communications subject to other substantive consumer protection regulations (i.e. RESPA, FDCPA, UDAAP and similar protections)

Reduces Risk of Foreclosures

- Early contact with borrowers has proven essential to preventing foreclosures
- Increases opportunities for effective home-retention options

Why Do Mortgage Servicing Calls Outweigh Privacy Interests?

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- Without these calls, consumers risk:
  - late fees
  - additional interest accrual
  - losing their homes
  - ruining their credit histories
  - losing access to credit
  - displacing their families
  - decreased property values
  - blighted neighborhoods
- These risks are preventable but require ***effective communication***.
- The federal agencies responsible for regulating this industry have already created deliberate rules governing telephone contact with borrowers.
- Imposing new or different rules on mortgage servicing calls would disrupt these carefully crafted rules and harm consumers.

The Record Clearly Supports Granting the Petition

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- The exemption sought was requested by FHFA.
- Consumer advocates agree the calls sought to be exempt help borrowers.
- Requiring mortgage servicers to place manually dialed calls to avoid TCPA liability does not help borrowers and does not offer a meaningful opportunity to comply.
- Mortgage servicers need a way to comply with the TCPA and other federal and state outbound call requirements.
- FHFA made clear that requiring consent or exposing servicers to liability adversely impacts outreach efforts for loss mitigation and homeownership preservation.
- Granting this Petition will remove these unintended and unnecessary obstacles and will facilitate critical communications between mortgage servicers and their borrowers.
- **MBA urges the Commission to grant the Petitio**n.